

# **Exhibit A**

**to**

## **Declaration of Barbara G. Werther**

**August 6, 2008 Werther e-mail re  
Draft Notice of Appeal**

**Bourgeois, Laura**

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**From:** Werther, Barbara G.  
**Sent:** Wednesday, August 06, 2008 2:04 PM  
**To:** 'kjones@bowlesverna.com'  
**Cc:** 'Ambroso, Michael T.'; McHugh, Ronan; Bourgeois, Laura; jheusinger@woodsaitken.com  
**Subject:** DOCS\_DC-#473876-v1-webcorcor60\_61\_62appeals.DOC

Dear Ken: Attached please find a draft notice of appeal for CORs 60, 61 and 62. I have also had prepared a cover letter to the board which I will forward in a second email. I am sorry that I did not have the opportunity to meet with you in SF this week, but I understand that the discussions were productive. Please review this draft notice of appeal and advise of changes you would like to make. As you can see, we have pursued the notice of appeal on the basis of a deemed denial because we have not received final decisions from the contracting officer on any of these claims.

We are happy to file this notice of appeal with regard to CORs 60, 61 and 62. However, I am sure you are aware that Judge Borwick has consolidated all of the pending appeals on the SF Federal Building, and has scheduled a further status conference for January 2009. Thus, there is a possibility that the judge will consolidate these appeals along with the other ones, and not allow them to proceed ahead of the omnibus claim. That said, there is nothing wrong with trying to push them forward on an earlier track.

I look forward to meeting you and to discussing any comments you may have on the draft. I can be reached at 202-508-4279 (office), 703-819-7890 (cell), or by return email.

Best, Barbara

Barbara G. Werther  
Thelen Reid Brown Raysman & Steiner, PLLC  
701 8th Street, NW  
Washington, DC 20001  
202-508-4279 (office)  
202-654-1839 (fax)

8/7/2008

**BEFORE THE  
CIVILIAN BOARD OF CONTRACT APPEALS**

Appeal of  
Dick/Morganti, A Joint Venture

CBCA No. \_\_\_\_\_

Under Contract No. GS-09P-02-KTC-0002  
Dated: 1/25/02

**NOTICE OF APPEAL**

Pursuant to the Contract Disputes Act, Dick/Morganti, A Joint Venture ("D/M"), hereby appeals the denial of claims arising out of extra work performed by one of its subcontractors, Webcor Construction, Inc. ("Webcor"), on the San Francisco Federal Building (the "Project") located at 1085 Mission Street, San Francisco, California. The claims are deemed denied since the GSA's Contracting Officer did not issue a decision within the allotted time period on any of the claims.

D/M submitted three separate certified claims on behalf of Webcor to the General Services Administration Contracting Officer, one dated June 13, 2007 for Change Order Request No. 60 ("June '07 claim") and the other two dated February 8, 2008 for Change Order Requests Nos. 61 and 62 ("February '08 claim").<sup>1</sup> (See Attachments A, B and C).

In its June '07 claim for COR 60, D/M requested compensation for the damages incurred by Webcor as a result of rebar congestion and additional concrete finish requirements. Webcor's additional costs incurred under this claim total \$4,671,740.27, which includes \$3,308,979.24 resulting from rebar congestion and \$1,632,761.02 resulting from increased finishes, not including D/M mark-up. The GSA Contracting Officer has not issued a final decision on this claim.

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<sup>1</sup> The Contracting Officer is Ms. Shelita Harper, U.S. General Services Administration, PBS, Property Development Div., 450 Golden Gate Ave., 3<sup>rd</sup> Floor West, San Francisco, CA 94102-3434. Phone: (415) 522-3206.

In February 2008, D/M submitted two additional claims: Webcor's claim for delays and costs incurred in placing a protective slab in the tower core area of the project (COR #61) and Webcor's claim for delays caused by adverse weather (COR #62). The additional costs associated with the February '08 claims total \$539,990. The Contracting Officer has not issued a final decision on these claims.

Under the Contract Disputes Act ("CDA"), the Contracting Officer had 60 days to either issue a decision or notify D/M of the time within which a final decision would be issued on each of the claims. As stated, the Contracting Officer did not issue a final decision on either claim. Since the June '07 claim was submitted over a year ago and the February '08 claims were submitted six months ago, the failure to issue a final decision on either claim is "deemed to be a decision by the contracting officer denying the claims." 41 U.S.C. 6(c)(5). Consequently, D/M files this Notice of Appeal.

For convenience, D/M has attached the June '07 claim and the February '08 claims, both submitted to the Contracting Officer, as well as the above-referenced COR's detailing the substance of Webcor's claims.

Respectfully submitted,

---

Barbara G. Werther  
Ronan J. McHugh  
Thelen, Reid, Brown, Raysman & Steiner LLP  
701 Eighth St., N.W.  
Washington, D.C. 20001  
202/508-4000  
*Counsel for*  
*Dick/Morganti, A Joint Venture*

cc: Shelita Harper, Contracting Officer  
Michael T. Ambroso, Esq. Dick Corp.  
Richard T. Bowles, Esq, Bowles & Verna LLP—Counsel for Webcor  
Kenneth Jones, Esq. Bowles & Verna LLP—Counsel for Webcor  
Joel Heusinger, Esq.

**Bourgeois, Laura**

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**From:** Werther, Barbara G.

**Sent:** Wednesday, August 06, 2008 2:05 PM

**To:** 'kjones@bowlesverna.com'

**Cc:** 'Ambroso, Michael T.'; McHugh, Ronan; Bourgeois, Laura; jheusinger@woodsaitken.com

**Subject:** DOCS\_DC-#473891-v1-ltrwebcorappeals.DOC

Here is the cover letter.

8/7/2008



Barbara G. Werther  
202.508.4279 Direct Dial  
202.654.1839 Direct Fax  
bwerther@thelen.com

August 6, 2008

**VIA HAND DELIVERY**

Recorder  
Civilian Board of Contract Appeals  
Office of the Clerk of the Board  
1800 F Street, NW  
Room 7022  
Washington, DC 20405

**Re: Contract No. GS-09P-02-KTC-0002**  
**Notice Of Appeal**

Recorder:

Pursuant to the Contract Disputes Act and the CBCA Rules of Procedure, Appellant, Dick/Morganti, A Joint Venture ("D/M"), by the enclosures, hereby files its Notice of Appeal of the deemed denial of D/M's claims dated June 13, 2007 and February 8, 2008 on the above referenced contract. Copies of all of the relevant documents are attached.

In accordance with Rule 7(b) of the CBCA Rules of Procedure, a copy of this letter and all enclosures have been sent via Electronic Mail to the Contracting Officer for the above referenced project.

Very truly yours,

Barbara G. Werther

Encl.

cc: Shelita Harper, Contracting Officer  
Michael T. Ambroso, Dick Corp.  
Richard T. Bowles, Esq, Bowles & Verna LLP—Counsel for Webcor  
Kenneth Jones, Esq. Bowles & Verna LLP—Counsel for Webcor

August 6, 2008  
Page 2

Joel Heusinger, Esq.

BGW/jcl



# **Exhibit B**

**to**

**Declaration of Barbara G. Werther**

**August 7, 2008 E-mail from Webcor's  
Counsel Approving Notice of Appeal**

**Ralls, John**

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**From:** Kenneth G. Jones [KJones@bowlesverna.com]  
**Sent:** Thursday, August 07, 2008 4:29 PM  
**To:** Werther, Barbara G.; Richard T. Bowles  
**Cc:** Ralls, John; McHugh, Ronan; Michael Connolly  
**Subject:** RE: Webcor Draft Notice of Appeal

Barbara -

The draft notices of appeal and cover letter look fine. Please put in final and send them out to the GSA asap.

Also, I understand your comments regarding the fact that the Judge may stay these claims like it did DMJV's omnibus claim. Nonetheless, as Ronan suggested during our meeting, we would like you to push for another CMC in light of the Webcor appeals. If nothing else, another CMC will give us the opportunity to explain to the Judge how non-responsive the GSA has been over the past two years and may result in Webcor's claim moving ahead of the omnibus claim.

Thanks.

Sincerely,

**Kenneth G. Jones**

Bowles & Verna, LLP  
2121 N. California Blvd., Suite 875  
Walnut Creek, California 94596  
(925) 935-3300  
(925) 935-0371 (fax)

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**From:** Werther, Barbara G. [mailto:bwether@thelen.com]  
**Sent:** Thursday, August 07, 2008 3:08 PM  
**To:** Kenneth G. Jones; Richard T. Bowles  
**Subject:** RE: Webcor Draft Notice of Appeal

That's great. I'm not trying to rush you at all, Ken. I just wanted to make sure that my email was not lost in the ether. Thanks. Regards, Barbara

-----Original Message-----

**From:** Kenneth G. Jones [mailto:KJones@bowlesverna.com]  
**Sent:** Thursday, August 07, 2008 6:06 PM  
**To:** Werther, Barbara G.; Richard T. Bowles  
**Subject:** RE: Webcor Draft Notice of Appeal

Barbara -

I am looking at them right now and will get back to you before the end of the day.

Thanks.

**Kenneth G. Jones**

Bowles & Verna, LLP  
2121 N. California Blvd., Suite 875  
Walnut Creek, California 94596  
(925) 935-3300  
(925) 935-0371 (fax)

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**From:** Werther, Barbara G. [mailto:[bwerther@thelen.com](mailto:bwerther@thelen.com)]  
**Sent:** Thursday, August 07, 2008 3:03 PM  
**To:** Richard T. Bowles  
**Cc:** Kenneth G. Jones  
**Subject:** Webcor Draft Notice of Appeal

Gentlemen: I sent Ken yesterday a draft notice of appeal of Webcor's CORs 60, 61 and 62. I have not heard anything from you, and just wanted to touch base to make sure you received my email and the draft. Kindly advise.

Best regards, Barbara

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**Barbara G. Werther**  
[bwerther@thelen.com](mailto:bwerther@thelen.com)  
Thelen Reid Brown Raysman & Steiner LLP  
701 Eighth Street, NW | Washington, DC 20001-3721  
tel: 202.508.4279 | fax: 202.654.1839



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8/8/2008

used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

# **Exhibit C**

**to**

**Declaration of Barbara G. Werther**

**Notice of Appeal of Webcor's Claims  
With Request for Status Conference**



701 Eighth Street, NW Washington, DC 20001  
Phone: 202 508 4000 Fax: 202 508 4321  
www.thelen.com

Barbara G. Werther  
202.508.4279 Direct Dial  
202.654.1839 Direct Fax  
bwerther@thelen.com

August 6, 2008

**VIA HAND DELIVERY**

Recorder  
Civilian Board of Contract Appeals  
Office of the Clerk of the Board  
1800 F Street, NW  
Washington, DC 20405

RECEIVED  
2008 AUG - 8 A 11: 18  
CIVILIAN BOARD OF  
CONTRACT APPEALS

**Re: Contract No. GS-09P-02-KTC-0002**  
**Notice Of Appeal**

Recorder:

Pursuant to the Contract Disputes Act and the CBCA Rules of Procedure, Appellant, Dick/Morganti, A Joint Venture ("D/M"), by the enclosures, hereby files its Notice of Appeal of the deemed denial of D/M's claims dated June 13, 2007 and February 8, 2008 on the above referenced contract. Copies of all of the relevant documents are attached.

In accordance with Rule 7(b) of the CBCA Rules of Procedure, a copy of this letter and all enclosures have been sent via Electronic Mail to the Contracting Officer for the above referenced project.

We would also ask the Board to set a status conference as soon as possible to discuss scheduling in connection with this appeal. We believe such a discussion is appropriate because the subject appeal relates to work done at the front end of the subject project, and raises issues that have been before the Contracting Officer for a very long time. Other appeals arising out the same project (CBCA Nos. 420, 450, 451, 810 and 818) have been assigned to Judge Borwick.

Thank you for your consideration.

Very truly yours,

Barbara G. Werther

Encl.



701 Eighth Street, NW Washington, DC 20001  
Phone: 202 508 4000 Fax: 202 508 4321  
[www.thelen.com](http://www.thelen.com)

August 6, 2008  
Page 2

Encl.

cc: Shelita Harper, Contracting Officer  
Michael T. Ambroso, Dick Corp.  
Richard T. Bowles, Esq, Bowles & Verna LLP—Counsel for Webcor  
Kenneth Jones, Esq. Bowles & Verna LLP—Counsel for Webcor  
Joel Heusinger, Esq.

BGW/jcl



**BEFORE THE  
CIVILIAN BOARD OF CONTRACT APPEALS**

Appeal of  
Dick/Morganti, A Joint Venture

Under Contract No. GS-09P-02-KTC-0002  
Dated: 1/25/02

CBCA No.

RECEIVED  
2008 AUG - 8 A 11: 19  
CIVILIAN BOARD OF  
CONTRACT APPEALS

**NOTICE OF APPEAL**

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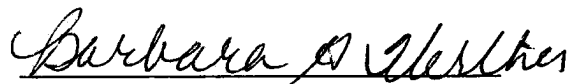
<sup>1</sup> The Contracting Officer is Ms. Shelita Harper, U.S. General Services Administration, PBS, Property Development Div., 450 Golden Gate Ave., 3<sup>rd</sup> Floor West, San Francisco, CA 94102-3434. Phone: (415) 522-3206.

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Respectfully submitted,



Barbara G. Werther

Ronan J. McHugh

Thelen, Reid, Brown, Raysman & Steiner LLP

701 Eighth St., N.W.

Washington, D.C. 20001

202/508-4000

*Counsel for*

*Dick/Morganti, A Joint Venture*

cc: Shelita Harper, Contracting Officer  
Michael T. Ambroso, Esq. Dick Corp.  
Richard T. Bowles, Esq, Bowles & Verna LLP—Counsel for Webcor  
Kenneth Jones, Esq. Bowles & Verna LLP—Counsel for Webcor  
Joel Heusinger, Esq.